

FILED

APR 08 2013

Board of Vocational Nursing
and Psychiatric Technicians

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8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. VN-2010-2466

12 **CARLO ALTO BURKE**
3811 Hepburn Avenue
13 Los Angeles, CA 90008

A C C U S A T I O N

14 Vocational Nurse License No. VN 220706

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
20 her official capacity as the Executive Officer of the Board of Vocational Nursing & Psychiatric
21 Technicians.

22 2. On or about May 18, 2006, the Board of Vocational Nursing and Psychiatric
23 Technicians (Board) issued Vocational Nurse License No. VN 220706 to Carlo Alto Burke
24 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to
25 the charges brought herein and will expire on September 30, 2013, unless renewed.

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3. This Accusation is brought before the Board, under the authority of the following

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1 “(f) Conviction of a crime substantially related to the qualifications, functions, and duties
2 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive
3 evidence of the conviction....”

4 7. Section 2878.5 states, in pertinent part:

5 “In addition to other acts constituting unprofessional conduct within the meaning of this
6 chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the
7 following:

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9 “(b) Use any controlled substance as defined in Division 10 of the Health and Safety
10 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in
11 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the
12 extent that the use impairs his or her ability to conduct with safety to the public the practice
13 authorized by his or her license.

14 “(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous
15 drug, or the prescription, consumption, or self-administration of any of the substances described
16 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
17 conclusive evidence thereof....”

18 REGULATORY PROVISIONS

19 8. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

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21 “(b) A licensed vocational nurse shall adhere to standards of the profession and shall
22 incorporate ethical and behavioral standards of professional practice which include but are not
23 limited to the following:

24

25 “(4) Abstaining from chemical/substance abuse....”

26 9. California Code of Regulations, title 16, section 2521 states, in pertinent part:

27 “For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
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1 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
2 considered substantially related to the qualifications, functions, or duties of a licensed vocational
3 nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational
4 nurse to perform the functions authorized by his license in a manner consistent with the public
5 health, safety, or welfare.”

6 **COST RECOVERY**

7 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
8 law judge to direct a licensee found to have committed a violation or violations of the licensing
9 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
10 case.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Conviction of a Substantially Related Crime)**

13 11. Respondent is subject to disciplinary action under section 2878, subdivisions (a) and
14 (f), and 490, in conjunction with California Code of Regulations, title 16, section 2521, in that
15 Respondent was convicted of crimes substantially related to the qualifications, functions, or
16 duties of a licensed vocational nurse, as follows:

17 a. On or about June 2, 2011, after pleading nolo contendere, Respondent was convicted
18 of one misdemeanor count of violating Vehicle Code section 23152(a) [driving under the
19 influence] in the criminal proceedings entitled *The People of the State of California v. Carlo Alto*
20 *Burke* (Super. Ct. Los Angeles County, 2010, No. 0BR03162). The Court sentenced Respondent
21 to 96 hours jail, placed Respondent on 60 months probation, and ordered Respondent to enroll in
22 an 18-month Second-Offender Alcohol and other Drug Education and Counseling Program.

23 b. The circumstances surrounding the conviction are on or about November 8, 2010,
24 Respondent was contacted by Burbank Police Department, for speeding. While speaking to
25 Respondent, the officer detected an odor of an alcoholic beverage emitting from his breath and
26 person. The officer asked Respondent if he had consumed any alcoholic beverages. Respondent
27 replied that he had “2 Corona beers”, but later changed his answer to “2 Vodka mixed drinks and
28 (1) beer.” Respondent was arrested for driving with a tested breath-alcohol level of 0.101/

1 0.099%.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Illegal Use of Drugs/ Alcohol Posing Danger to Public & Impair Practice)**

4 12. Respondent is subject to disciplinary action under section 2878.5, subdivision (b), in
5 that Respondent consumed alcohol in manner that was dangerous to the public and impaired his
6 ability to conduct with safety to the public the practice authorized by his license. Complainant
7 refers to, and by this reference incorporates, the allegations set forth above in paragraph 11,
8 subparagraphs a and b, as though set forth fully.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Abstain from Chemical/Substance Abuse)**

11 13. Respondent is subject to disciplinary action under section 2878, subdivision (a), in
12 conjunction with California Code of Regulations, title 16, section 2518.6, subdivision (b)(4), in
13 that Respondent failed to abstain from alcohol abuse. Complainant refers to, and by this reference
14 incorporates, the allegations set forth above in paragraphs 11-12, inclusive, as though set forth
15 fully.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Alcohol Related Convictions)**

18 14. Respondent is subject to disciplinary action under sections 2878, subdivision (a), and
19 2878.5, subdivision (c), on the grounds of unprofessional conduct, in that on or about June 2,
20 2011, Respondent was convicted of crimes involving alcoholic beverages. Complainant refers to,
21 and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs
22 a and b, inclusive, as though set forth fully.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct)**

25 15. Respondent is subject to disciplinary action under section 2878, subdivision (a), in
26 that Respondent committed acts which constitute unprofessional conduct. Complainant refers to,
27 and by this reference incorporates, the allegations set forth above in paragraphs 11-14, inclusive,
28 as though set forth fully.

1 DISCIPLINE CONSIDERATIONS

2 16. To determine the degree of discipline, Complainant alleges, as follows:

3 a. On or about December 4, 2007, the Board issued to Respondent a Notice of Warning
4 letter for his previous conviction.

5 b. On or about September 21, 2007, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [driving with a
7 blood alcohol level of 0.08% or higher] in the criminal proceedings entitled *The People of the*
8 *State of California v. Carlo Alto Burke* (Super. Ct. Los Angeles County, 2007, No. 7MP07183).
9 The Court placed Respondent on 36 months probation and ordered Respondent to enroll in and
10 complete the 3 month, First-Offender Alcohol and othe Drug Education Program.

11 c. The circumstances surrounding the conviction are on or about May 26, 2007,
12 Respondent was contacted by Burbank Police Department, for speeding. While speaking to
13 Respondent, the officer detected an odor of an alcoholic beverage emitting from his breath and
14 person. The officer asked Respondent if he had consumed any alcoholic beverages. Respondent
15 replied that he had "2 Corona beers". Respondent was arrested for driving with a tested breath-
16 alcohol content of level of 0.103/ 0.092%.

17 PRAYER

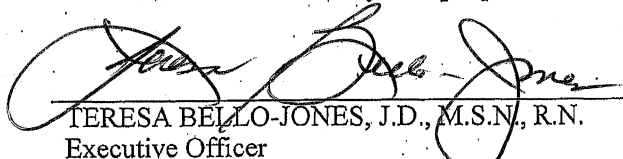
18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board issue a decision:

20 1. Revoking or suspending Vocational Nurse License No. VN 220706, issued to Carlo
21 Alto Burke;

22 2. Ordering Carlo Alto Burke to pay the Board the reasonable costs of the investigation
23 and enforcement of this case, pursuant to section 125.3; and

24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: APR 08 2013

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27 TERESA BELLO-JONES, J.D., M.S.N., R.N.
28 Executive Officer
Board of Vocational Nursing & Psychiatric Technicians
State of California
Complainant

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